

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Diego Gas & Electric
Company (U 902-E) for Order Approving Power
Purchase Agreements with Certain Qualifying
Facilities.

Application 02-03-010
(Filed March 8, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING
GRANTING, IN PART, MOTION OF SAN DIEGO GAS &
ELECTRIC COMPANY FOR PROTECTIVE ORDER**

This ruling grants, in part, San Diego Gas & Electric Company's (SDG&E) Motion for a Protective Order (Motion) regarding SDG&E's Power Purchase Agreements (PPAs) with Minnesota Methane and its affiliates (MM), MM San Diego LLC (Miramar), MM San Diego LLC (North City), and MM Prima Deshecha Energy LLC (collectively, "the MM Projects").

On March 8, 2002, SDG&E filed an application requesting an order approving the PPAs (Application). The Application includes a public version of its PPAs and a redacted version of its PPAs filed under seal. Accompanying its Application, SDG&E filed a motion requesting a Protective Order to preserve the confidentiality of the redacted PPAs. SDG&E states that the confidential information it seeks to protect are the prices SDG&E will pay to the MM Projects for energy during the term of the contract, along with certain terms and conditions on pricing found in Sections 7.3 and 7.4 of the PPAs. Attached to SDG&E's Motion is a proposed protective order that restricts public disclosure of the confidential information including disclosure by Commission employees or Commission agents.

SDG&E argues that public disclosure of the confidential information, including the financial terms of the PPAs, could prejudice the MM Projects' current future negotiations regarding project associated financing arrangements, power sales or both. SDG&E contends that having such information revealed publicly is contrary to General Order 66-C (G.O. 66-C) and will negatively impact qualifying facility (QF) willingness to provide information necessary to demonstrate project viability and for the utility to demonstrate a customer benefit. SDG&E further argues that public disclosure of the confidential information will place SDG&E at a disadvantage in negotiating with other QFs and potentially increase contract costs thus reducing customer savings.

On March 25, 2002, the Office of Ratepayer Advocates (ORA) filed a response to SDG&E's Motion objecting to the proposed Protective Order to the extent it applies to Commission Staff. ORA argues that Public Utilities Code Section 583 (Section 583) provides ample protection against any Commission employee publicly releasing confidential information.¹ ORA argues that the Commission has consistently held that restrictive protective orders covering its staff are superfluous and that confidential information is protected under G.O. 66-C and Section 583.² ORA contends that applying a protective order to Commission staff would unduly burden the staff in its work and on a theoretical level undermine the legitimacy and operative authority of existing statutes and

¹ Section 583 assures that staff will not disclose information received from regulated utilities unless that disclosure is in the context of a Commission proceeding or is otherwise ordered by the Commission. Public disclosure by a Commission employee under Section 583 is considered a misdemeanor.

² See Decision (D.). 91-12-019, 42 Cal. P.U.C. 2nd 298, 300 and D.98-04-066, 80 Cal. P.U.C. 2nd 171, 177.

rules including Section 583. No other parties have filed responses to either SDG&E's Application or its Motion.

After reviewing the specific information SDG&E seeks to protect and consulting with the Assigned Commissioner, we conclude that the "Confidential Information" is worthy of protection. SDG&E has demonstrated that disclosure of this information on SDG&E's prices for energy will place SDG&E at a disadvantage in negotiating with other QFs, and may increase QF contract costs thus increasing customer costs. However, extending the protective order to encompass the Commission and its staff is unnecessary and could impair the Commission's ability to effectively execute its regulatory functions. As argued by ORA sufficient protections already exist in G.O. 66-C and Section 583 that protect against unlawful public disclosure of confidential documents by the Commission, its staff, and any consultants employed by the Commission. SDG&E's motion will be granted to the extent that it applies to parties other than Commissioners, Commission staff or consultants employed by the Commission.

Accordingly, the motion of SDG&E for a protective order should be granted, in part, as it applies to third parties excluding the Commission, Commission staff, and consultants employed by the Commission. The Confidential Information consisting of the redacted versions of the PPAs filed under seal on March 8, 2002, shall remain under seal and protected from public disclosure.

This confidential information shall not be made accessible or disclosed to anyone other than the Commissioners, Commission staff, or consultants employed by the Commission. SDG&E shall be excused from the requirement of providing a copy of the Confidential Information to interested parties (other than employees and agents of the Commission) unless and until such parties make a

sufficient showing of need as to outweigh SDG&E's interests in preserving the confidentiality of the Confidential Information.

Therefore, **IT IS RULED** that:

1. The March 8, 2002 Motion of San Diego Gas & Electric Company for a protective order is granted as described above.
2. These documents shall remain under seal for a period of two years.

Dated April 12, 2002, at San Francisco, California

/s/ BRUCE DEBERRY

Bruce DeBerry
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Granting, in Part, Motion of San Diego Gas & Electric Company for Protective Order on all parties of record in this proceeding or their attorneys of record.

Dated April 12, 2002, at San Francisco, California.

/s/ TERESITA C. GALLARDO

Teresita C. Gallardo

N O T I C E

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